



February 25, 2010

Co-Chair Thomas Colapietro  
Co-Chair Jim Shapiro  
Senator Kevin Witkos  
Representative Penny Bacchiochi

General Law Committee:

We are submitting testimony in on H.B. 5220, AN ACT CONCERNING  
COMPETITION IN THE MOTOR FUEL INDUSTRY.

The Independent Connecticut Petroleum Association (ICPA) represents 560 petroleum marketers and their associated business in Connecticut. ICPA members employ over 13,000 people in our state and provide our fellow citizens with gasoline and heating oil.

GASDA represent 450 members and they are responsible for selling over 60% of all gasoline sold in Connecticut. Over the last 5-years, GASDA members have purchased approximately 200 locations from the Major Oil Companies and are on track to purchase another 100 in 2010. This has kept jobs here in Connecticut rather than selling locations which end up for other than service station use and prevent the ranks of the unemployed from growing further at a time when the state can least afford more unemployment claims!

The statement of purposes of this bill is to "promote competition in the motor fuels industry". As representatives of the gasoline industry, this goal is of the utmost importance to a properly functioning market place. Connecticut's gasoline industry is fiercely competitive, and we support laws that protect and promote that environment.

While the gasoline industry supports the stated purpose of H.B. 5220, we believe that it can be accomplished in a more comprehensive and established approach that will benefit consumers and the local family businesses that serve them.

Since 1982 the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and state attorneys general have used the Herfindahl-Hirschman Index (HHI) to measure market concentration for purposes of antitrust enforcement.

The HHI of a market is calculated by summing the squares of the percentage market shares held by the respective firms. For example, an industry consisting of two firms with market shares of 70% and 30% has an HHI of  $70^2 + 30^2$ , or 5800. The closer a market is to being a monopoly, the higher the market's concentration (and the lower its competition).

If, for example, if there were only one firm in an industry, that firm would have 100% market share, and the HHI would equal 10,000 ( $100^2$ ), indicating a monopoly. Or, if there were thousands of firms competing, each would have nearly 0% market share, and the HHI would be close to zero, indicating nearly perfect competition.

Section 2(a) of this bill should be replaced with language that adopts the FTC's HHI, so that a formula that has been applied for close to three decades can fairly and objectively determine market density. Section 2(a) of the bill seems to formulate a new approach that already has a reliable and accepted indicator to determine market density. Instituting new and arbitrary tests to determine market density is untested, inefficient and unnecessary.

In addition to applying the HHI when gasoline stations are bought and sold, we ask that the committee strengthen the protections that the bill strives to achieve by bolstering the "gouging" law as found in section 42-234 of the CGS.

As the law stands today, gasoline retailers are in the dark as to if and when they are "gouging". Connecticut law provides no guidance to the gasoline industry or law enforcement officials as to when "gouging" occurs.

Gouging Connecticut motorists is unacceptable and our statute today provides NO protection for them! Phrases like "gross disparity", "abnormal market disruption" and "unconscionably excessive" are not defined in the law. How can consumers be protected and local family owned businesses comply with the law if there is not absolute clarity?

ICPA and GASDA request that the bill clearly define what gouging is so that consumers are protected and family owned businesses are not subject to undefined laws that ultimately serve no one.

We ask that the General Law Committee **accept substitute language to H.B. 5220, AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL INDUSTRY** that works to protect the competitive market place in an efficient and established manner while allowing the state to have a workable gouging law.

Respectfully,

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